IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

C.R. No. 5754 of 2006 (O&M)
Date of decision : 2.11.2006.

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Parties Name

Manoj Soni

..... Petitioner

vs.

Meetu

.....Respondent

Coram: Hon'ble Mr. Justice S.N. Aggarwal

Present: Sh. R.K. Joshi, Advocate
for the petitioner.

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S.N. Aggarwal, J.

The petitioner herein is the respondent-husband before the learned trial Court in the divorce petition filed by the respondent herein on the ground of cruelty. The divorce petition was contested by the petitioner. Issues were framed. The parties led the evidence. When the file was at the rebuttal and arguments stage, the respondent-wife filed an application under Order 6 rule 17 CPC for amendment of the petition in order to take the plea that the petitioner was married earlier with Marry Soni prior to the marriage of the parties. This application was accepted by the learned trial Court vide order dated 13.10.2006.

Hence, the present petition.

The submission of the learned counsel for the petitioner was that the provision of amendment has been totally overhauled by the amendment of the Code of Civil Procedure. It has been restricted to the situations, either till the framing of issues or in case the evidence was not in the knowledge of the party applying for amendment.

It was submitted by the learned counsel for the petitioner that the respondent had earlier pleaded that the petitioner was married to Marry Soni prior to the marriage of the parties. She had even tendered in evidence documents Exhibit A-1 to A-3 to prove marital status of the petitioner with Marry Soni. Hence, it was submitted that this fact was not a new fact and the amendment should have been disallowed by the learned trial Court.

This submission has been considered. The learned trial Court has allowed the amendment on the specific undertaking given by Meetu-respondent herein (petitioner in the learned trial Court) that she would only amend the divorce petition in order to take the plea that her marriage with Manoj Soni- petitioner was void as he was already married to Marry Soni and she is also to take an alternative ground for challenging the marriage of the parties on the ground of nullity. She had further undertaken that she would not lead any evidence after the proposed amendment.

The amendment has been allowed by the learned trial Court by exercising its judicial discretion and it is not such which would either lead to miscarriage of justice or which would cause prejudice to the petitioner. Therefore, this amendment is upheld and in the interest

of justice, this order passed by the learned trial Court is upheld.

However, after the amended petition is filed, the present petitioner would have a right to file written statement to the amended petition. New issues arising from the amended pleadings would be framed. The respondent herein has already given an undertaking that she would not lead any evidence.

Learned counsel for the petitioner submitted that even his party is willing for divorce with mutual consent. He can file such an application before the learned trial Court and the learned trial Court shall consider the application in accordance with law in the best interests of justice.

The learned trial Court shall also expedite the disposal of this petition, because the petitioner is under liability to pay maintenance during its pendency and the disposal has been delayed because of the application for amendment filed by the respondent-wife.

Keeping in view the discussion held above, this petition is disposed of with the direction to the learned trial Court to consider the application of the petitioner for divorce with mutual consent under Section 13-B of the Hindu Marriage Act and also to expedite the disposal of the petition filed by the respondent herein under Section 13 of the Hindu Marriage Act.

Disposed of.

(S.N.Aggarwal)
Judge

2.11.2006.
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